

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

Complaint No.: - 1212/3/21/08

Date of Admission: - 27.07.2021

**Quorum: - Er. Tushar Gupta, Chairman
Er. Vikas Gupta, Member**

In ref:-

Sh.Yash Pal & Ors.
Shivam Insustries, Shoghi,
V.P.O Shoghi Distt Shimla

Complainant

V/s.

HPSEBL & Others.

Respondents

1. The Executive Director (Pers.),
HPSEBL, Vidyut Bhawan,
Shimla-171004.
2. The Sr. Executive Engineer,
Electrical Division No1, HPSEBL,
Shimla, Distt. Shimla (HP).
3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Jutogh, Distt. Shimla (HP).

Respondents

Final hearing:-

14.07.2022

Present for:-

Complainant

1. None

Respondent

1. Sh. Anil Kumar God, Advocate,
2. Sh. Kamlesh Saklani, Law Officer,
3. Er. Vineet Bhardwaj, A.E. Jutogh.

Date of Decision: -

29.07.2022

ORDER

BRIEF FACTS OF THE CASE –

- (1) Complaint has been filed on 27.07.2021 under regulation 17 of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013. The Complainant Sh Yash Pal is the owner / partner of business firm by the name of Shivam Industries, Shoghi, District Shimla and a consumer of the Respondent HPSEBL bearing consumer ID 100011001161 categorized under 'Medium Industry Power Supply' (or MIPS);
- (2) The Complainant received a Defaulter Notice dated 27.02.2021 (Annexure- C1) with 15 days Notice period, from the Respondent No 4 being an office of the HPSEBL, informing therein non-payment of Rs 12,00,134/- against some bill number 100037249975. The Complainant though not directly, has impugned this Defaulter Notice dated 27.02.2021 (Annexure- C1). Defaulter Notices with 15 days Notice period is a statutory requirement bestowed upon the licensee prescribed in sub-section 56(1) of the Electricity Act, 2003 for non-payment of any charge for electricity or any sum other than charge for electricity as a precondition before action of disconnection of supply may be taken by the licensee;
- (3) The matter relates to ibid Defaulter Notice dated 27.02.2021 for Rs 12,00,134/- which earlier in the year 2018 as alleged, was raised by the Respondents vide some Bill No 1100078275 dated 19.09.2018 and some Notice dated 15.11.2018 (extracted from submissions but which have not been placed on record by either party) for an amount of Rs 6,98,493/ on account of less recovery of Peak Load Violation Charges (or PLVC). This was pointed out by the Resident Audit party to the Respondent HPSEBL in its Audit conducted during the year 2015-16 for the Audit observation period March 2010 to October 2014 (Annexure RA-4 along with attachment thereto as Annexure M to para 12A). The amount of Rs 6,98,493/ piled up to Rs 12,00,134/- on account of surcharge rate of 2% per month between the period w.e.f 15.11.2018 to 27.02.2021;
- (4) In the said period, between 15.11.2018 to 27.02.2021, the Complainant had filed a Civil Suit before Ld Civil Judge vide No. 89/2019 for the decree of declaration for permanent prohibitory injunction against disconnection and for setting aside ibid arrears of Rs 6,98,493/- imposed by the Respondents here-in vide Bill No 1100078275 dated 19.09.2018. This Suit filed in the year 2019 was later withdrawn by the plaintiff / Complainant herein vide Ld Civil Judge Order dated 31.08.2020 without seeking any

liberty to file fresh suit or without grant of liberty to file fresh Complaint before appropriate Forum;

- (5) During the proceedings in the instant complaint, directions were imparted by the Forum for reconciliation / amicable settlement vide Interim Order dated 16.12.2021, which was reiterated by the Forum in its subsequent Interim Orders as well. Though such was not the intention of the Ld Forum, Respondent HPSEBL merely out of compliance raised revised Demand of Rs 3,26,791.20 vide letter No 87-89 dated 22.04.2022. For the reason that the Complainant was not agreeable to settle the matter amicably despite revised Demand, this Forum vide Interim Order dated 03.06.2022, decided to proceed for final hearing and to decide the matter on merits.

COMPLAINANT

- (6) The Complainant mainly contends that the Bills being raised by the Respondents are being paid by the Complainant. In absence of details of short recovery of past arrears, Respondents are not justified in raising the alleged additional demand of Rs 6,98,493/ vide Bill No 1100078275 dated 19.09.2018 / Notice dated 15.11.2018 and for Rs 12,00,134/- vide Notice dated 27.02.2021 which deserve to be quashed and set-aside;

RESPONDENT

- (7) The Respondent HPSEBL in their reply have submitted that HPSEBL is within its legal right to recover the short recovery as pointed out by the Audit Party in the Audit conducted during the year 2015-16 for the Audit observation period March 2010 to October 2014 (Annexure RA-4 along with attachment thereto as Annexure M to para 12A) .
- (8) The Respondents contended on the issue of bona-fide mistake and on limitation that in accordance with catena of judgments by the Hon'ble Apex Court as well as various High Courts, provisions of sub-section 56(2) of the Electricity Act, 2003 do not put any limitation for raising demand of past dues or arrears, if not discovered or pointed out earlier due to any mistake and liability to pay accrues when quantified and bill is raised. Hence, the Demand issued by the Respondent is a legal one and the Complainant is liable to pay the same accordingly. The Respondent has cited decisions by the Hon'ble APTEL and the Delhi High Court to justify that there was a bona-fide mistake on the part of the Respondent while uploading of data and that the instant ibid Demand vide impugned Notice dated 27.02.2021 is not hit by limitation under provisions of sub-section 56(2) of the Electricity Act, 2003.

- (9) That the Complainant had filed a Civil suit which was later withdrawn by the Complainant vide Ld Civil Judge Order dated 31.08.2020 (Annexure RA-3);

FORUM

- (10) This Forum has examined the relevant provisions of the Electricity Act, 2003, various relevant Regulations framed by the Ld HP Electricity Regulatory Commission (or the HPERC) including relevant provisions of HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 and record as facts alongwith pleadings of the parties. This Forum has heard the parties at length. The considered opinion of the Forum has been gathered after considering the fair facts, evidences and correspondence placed on record and arguments adduced by both the parties;
- (11) At the outset, so as to effectively decide the contention raised by the Complainant, this Forum sets aside the revised Demand of Rs 3,26,791.20 raised by the Respondent HPSEBL vide letter No 87-89 dated 22.04.2022, such having been raised merely out of compliance to Interim Orders passed by the Ld Forum wherein only amicable settlement was intended and where the raising of a revised Demand was not sought. The setting aside of ibid revised Demand of Rs 3,26,791.20 is also imperative considering that amicable settlement between the parties had failed and because this revised demand is neither impugned nor the subject matter of dispute between parties before this Forum;
- (12) For the sake of convenience, sub-regulations 19(b) and 19(c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 are reproduced below which read as –

Quote

.....
19. Limitation/ pre-conditions for submission of grievance.- The Forum may reject the grievance at any stage under any or more of the following circumstances:-
.....

(b) in cases which fall under sections 126,127, 135 to 139, 152, and 161 of the Act;

(c) in cases where the grievance is submitted two years after the date on which the cause of action has arisen; and
.....

UnQuote

- (13) On examination of the matter on delays and latches it was observed that from the Order dated 31.08.2020 passed by the Ld Civil Judge when the suit / plaint was unconditionally

withdrawn to the date of filing of instant Complaint on 27.07.2021, ie for 11 months the consumer/Complainant herein did not take recourse to legal remedy. However, because the Complainant was before the Ld Civil Court from the year 2019 to August 2020, ie almost 1 year and 8 months, this Forum observes that the instant complaint is not barred by limitation under sub-regulations 19(c) of the HPERC (Consumer Grievances Redressal Forum and Ombudsman) Regulations, 2013 despite suit / plaint having been withdrawn unconditionally;

- (14) Further, it has also been noticed by this Forum that ibid Defaulter Notice dated 15.11.2018 and Bill No 1100078275 dated 19.09.2018 have not been placed on record by the Complainant and are also not under challenge in the instant complaint and neither is there any specific challenge to any item that may be contained therein. Defaulter Notices with 15 days Notice period conform to statutory requirement prescribed in sub-section 56(1) of the Electricity Act, 2003 for non-payment of any charge for electricity or any sum other than charge for electricity before action for disconnection of electricity is taken. However, the complainant has sought relief from this Forum against some amount of Rs 6,98,493/- contained in the said Bill / Notice but because both the ibid Bill dated 19.09.2018 and the Notice dated 15.11.2018 have not been placed on record by the Complainant and are not under challenge before the Forum and neither is there any specific challenge to any item of the said Bill / Notice, therefore this Forum restricts its observations, finding and decision to only the impugned Defaulter Notice dated 27.02.2021 (Annexure- C1) for Rs 12,00,134/- issued by the Respondent HPSEBL;
- (15) This Forum also observes that the Complainant in the instant complaint has not challenged the legal vires of the Notice dated 27.02.2021 (Annexure C-1) for Rs 12,00,134/-. However, in the matter before the Ld Civil Judge Senior Division Shimla, the matter was agitated relying upon sub-section 126 (2) of the Electricity Act, 2003 which is in terms of assessment for unauthorized use of electricity. The issue of unauthorized use and assessment therein under section 126 of the Electricity Act, 2003 is not the subject matter of dispute before the Forum. Moreover, scope of section 126 is also beyond the authority /jurisdiction of this Forum as proscribed in sub-regulation 19(b) of the ibid HPERC Regulations. The Complainant in the instant complaint has only pressed before this Forum the issue of non-providing the Complainant with the underlying basis / mode of calculating the readings of the electricity meter by the Respondents;

- (16) The Forum also observes that the Complainant has also not laid any challenge to the correctness of the demand, as being in contravention of the relevant Tariff Orders issued by the Ld HP Electricity Regulatory Commission (or the HPERC), which essentially requires showing month-wise-item-wise consumption parameters, applicable tariff as per relevant Tariff Orders issued by the Ld HPERC and amounts due vis-à-vis those charged by the Respondent. It is evident from settled law that while the consumer uses electricity being a good, as has been held by a constitution bench of the Hon'ble Apex Court in a case titled State of Andhra Pradesh Vs National Thermal Power Corporation Ltd, the distribution licensee charges for this electricity / good at the specified tariffs/ charges of electricity which are determined by the Ld HPERC for a Financial Year vide its Tariff Orders under the Electricity Act, 2003 and Regulations framed there under. These tariffs / charges are applied to the consumption or good and thereafter a Bill or Demand is raised to the consumer. This Forum is also of the considered opinion that the Respondent HPSEBL being a distribution licensee cannot charge any tariff in excess of that specified by the Ld HPERC. At the same time, it is also relevant to mention that the Respondent HPSEBL being a distribution licensee is bound to recover the cost / price of electricity consumed by a consumer strictly as per tariffs /charges that are determined and specified by the Ld HPERC vide its Tariff Orders and consumer is bound to pay these tariffs / charges accordingly. Any lapse, mistake or bona-fide error by the distribution licensee with regard to under recovery of actual tariff / cost / price of electricity, if not recovered from the respective consumer who has availed the good, may result either in permanent loss to the distribution licensee being a public utility or with the burdening of this utility's loss upon other consumers, both of which are bad and against mandated provisions of Tariff Regulations on the matter;
- (17) In the instant matter, this Forum is of the considered opinion that if the consumer Complainant regularly pays bills as are raised by the Respondent HPSEBL, then presumption is raised that consumer complainant herein would not at anytime pay his electricity bills without ascertaining their correctness by way of applying the tariffs as were ordered by the Ld HPERC on its electricity consumption and calculating the charges actually payable which in the instant matter could also have been calculated by the Complainant for the monthly bills in respect of which arrears were evolved by the Respondent for Peak Load Violation Charges (PLVC) by making some effort and by showing to this Forum any discrepancy whatsoever and then disputing the demanded amount;

- (18) The moot issue for determination as made out by this Forum from the complaint is whether the Respondent HPSEBL can or cannot raise amount towards short recovery of peak load hour violations in excess of peak load exemption availed for the past period which is March 2010 to October, 2014 which was neither noticed nor raised in the past being a bona-fide mistake / error and whether such is hit by limitation under sub-section 56(2) of the Electricity Act, 2003 and consequently therefore whether complainant consumer of the HPSEBL, is or is not liable to make payments raised vide impugned Defaulter Notice;
- (19) In the matter, this Forum holds that the Respondent did make a bona-fide mistake / error in the past by missing to raise the peak load hour violation amounts in the original Bill which was later pointed out by the Audit. This fact has not been disputed by the Complainant. The Respondent is certainly within his legal rights to raise past arrears or dues if not discovered earlier due to any mistake as has been held in Hon'ble Apex Court Judgment dated 18.02.2020 in Civil Appeal 1672/2020 while interpreting section 56(2) of the Electricity Act, 2003. However, onus would still lie on the Complainant to show that such arrears have been calculated wrongly or is hit by limitation of 2 years prescribed in ibid section 56(2) which is conspicuously missing on the part of the Complainant;
- (20) Having gone through the case and having heard the matter by way of arguments extended by the parties, this Forum holds that the action of raising impugned Defaulter Notice dated 27.02.2021 by the Respondent cannot be held to be an illegal one or a wrong one unless otherwise proved to be so. The Defaulter Notice with 15 days Notice period is for non-payment of previous charges as may have been raised by the licensee and conforms to statutory requirement prescribed in section 56(1) of the Electricity Act, 2003 for non-payment of any charge for electricity or any sum other than charge for electricity as a precondition before any action for disconnection of electricity is taken by the licensee. This Forum sees no reason to interfere with this Defaulter Notice dated 27.02.2021 when the original Bill or any of its components are not under challenge before this Forum. This Forum does not find merit in the complaint and arguments given by the Complainant. The issue is accordingly decided against the Complainant and in favour of the Respondent HPSEBL on foregoing terms.
- (21) The Complainant, after adjusting for the amount of Rs 2,32,831/- as ordered to be deposited vide Forum's Interim Order dated 27.07.2021, shall pay / deposit within 30 days of this Order, the remaining amount from the total amount of Rs 12,00,134/-

contained in the impugned Defaulter Notice dated 27.02.2021, failing which the Respondent HPSEBL shall be at liberty to invoke the provisions of law on disconnection of electricity under Section 56(1) of the ibid Act.

In aforesaid terms, the instant complaint is decided on merits against the Complainant and in favour of the Respondents HPSEBL and is accordingly disposed of as dismissed.

Parties are left to bear their own costs.

Order reserved is released before the parties present today on 29.07.2022 at Shimla in open Forum.

Certified copies of this Order be supplied to the parties.

The original case file be consigned to record room along with this Order, for safe custody.

Sd/-

Vikas Gupta
(Member)

Sd/-

Tushar Gupta
(Chairperson)

Notice

Registered

CONSUMERS GRIEVANCES REDRESSAL FORUM AT KASUMPTI SHIMLA-171009.

No.CGRF/Complaint No. 1212/3/21/08

Dated:-

Sh.Yash Pal & Ors.
Shivam Insustries, Shoghi,
V.P.O Shoghi Distt Shimla

Complainant

V/s.

HPSEBL & Others.

Respondents

Complaint No. 1212/3/21/08

1. The Executive Director (Pers.),
HPSEBL,Vidyut Bhawan,
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2. The Sr. Executive Engineer,
Electrical Division No1, HPSEBL,
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3. The Assistant Executive Engineer,
Electrical Sub-Division HPSEBL,
Jutogh, Distt. Shimla (HP).

Respondents

The Certified copy of final order dated 29.07.2022, passed by the Hon'ble Forum in the aforesaid complaint is enclosed herewith for further necessary action at your end please.

DA:-As above

Secretary,
Consumers Grievances Redressal Forum,
HPSEBL, Kasumpti Shimla-171009.